

REMARKS/ARGUMENTS

Applicants have received the Office Action dated February 27, 2007, in which the Examiner: 1) objected to the Abstract; 2) rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of McIntyre et al. (U.S. Patent No. 6,272,113, hereinafter “McIntyre”); in view of Foschiano et al. (U.S. Patent No. 6,765,877, hereinafter “Foschiano”); 3) objected to claims 19, 20 and 29 because of informalities; 4) rejected claims 1-9, 11-13 and 21-27 under 35 U.S.C. § 102(b) as being allegedly anticipated by McIntyre; 5) rejected claims 14-20, 28 and 29 under 35 U.S.C. § 103(a) as being allegedly obvious over McIntyre in view of Mackiewich et al. (U.S. Pub. No. 2004/0223501, hereinafter “Mackiewich”); and 6) objected to claim 10 as being dependent upon a rejected base claim, but otherwise allowable. With this Response, Applicants amend the Abstract and claims 1, 19, 21, 23, 28 and 29. Based on the amendments and arguments presented herein, Applicants respectfully submit that this application is in condition for allowance.

I. OBJECTION TO THE ABSTRACT

The Examiner objected to the Abstract for containing less than 50 words. Applicants have amended the Abstract to contain between 50 and 150 words, as required by MPEP § 608.01(b). Accordingly, Applicants kindly request the Examiner to remove this objection.

II. NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

The Examiner rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of McIntyre in view of Foschiano. As amended, Applicants’ claim 1 now requires “...each network port in the team is associated with a different NIC, said NICs associated with [a] common team network address.” The Examiner clearly stated in the Office Action that McIntyre fails to disclose this particular limitation. Specifically, the Examiner admitted that McIntyre does “not disclose a system/method, wherein the team is assigned a single network address to be used by external device...” (p. 14). Foschiano fails to disclose this limitation. Mackiewich also fails to disclose

this limitation, as explained further below under subheading IV. Because none of the art of record discloses this limitation, by definition, it is not possible for any of the art of record to *claim* this limitation. Thus, it is improper for claim 1 to be rejected under a non-statutory obviousness-type double patenting rejection. For at least this reason, Applicants kindly request that the Examiner remove this rejection.

III. CLAIM OBJECTIONS

The Examiner objected to claims 19-20 and 29 due to various informalities. Applicants have amended claims 19 and 29 to address these informalities. Accordingly, Applicants request the Examiner to remove the objections to claims 19-20 and 29.

IV. REJECTIONS UNDER 35 U.S.C. § 102(b) AND 35 U.S.C. § 103(a)

The Examiner rejected claims 1-9, 11-13 and 21-27 under 35 U.S.C. § 102(b) as anticipated by McIntyre. The Examiner also rejected claims 14-20 and 28-29 under 35 U.S.C. § 103(a) as obvious under McIntyre in view of Mackiewich. Applicants traverse these rejections. Claim 1 requires a driver system which determines which of a plurality of network ports can be combined together to form a team. As amended, claim 1 requires that “each network port in the team is associated with a different NIC, said NICs associated with a common network address to be used by external network logic.” None of the art of record teaches or even suggests this limitation.

The Examiner admits on p. 14 of the Office Action that McIntyre does “not disclose a system/method, wherein the team is assigned a single network address to be used by external device... .” Because McIntyre fails to disclose this limitation, the Examiner turns to Mackiewich. The Examiner asserts that lines 5-9 of paragraph 47 of Mackiewich teach this limitation of claim 1. Referring now to Figure 4 and lines 5-9 of paragraph 47 of Mackiewich, there is disclosed a router 302 having a “single MAC address and a plurality of ports 326.” Mackiewich further discloses that the ports 326 may comprise virtual and/or physical ports.

Contrary to the Examiner’s assertion, the router 302 of Mackiewich fails to satisfy the limitation of claim 1 that “each network port in the team is associated

with a different NIC, said NICs associated with a common network address to be used by external network logic." First, Mackiewich fails to even disclose NICs, so it is impossible for Mackiewich to teach or even suggest this limitation. Moreover, although router 302 has a plurality of ports, the number of ports in the router 302 has no bearing on the number of NICs associated with the router 302, since a router port may or may not be associated with a NIC. Further, Mackiewich does not disclose a "team" of NICs or even a team of network ports, but merely discloses a router with multiple ports. There is no indication in Mackiewich as to whether the ports are "teamed" together. Further still, Mackiewich does not disclose that "each network port in [a] team is associated with a different NIC," but in fact, as mentioned, Mackiewich fails to disclose teams of NICs or even NICs at all. Mackiewich does not disclose NICs that are "associated with a common network address to be used by external network logic" as required by claim 1. Instead, Mackiewich merely teaches a router with a single MAC address and multiple ports.

Thus, as the Examiner admits, McIntyre does not teach this limitation, and as Applicants have clearly demonstrated, Mackiewich fails to teach or even suggest this limitation. No other art of record satisfies the deficiencies of McIntyre and Mackiewich. For at least these reasons, claim 1 is patentable over all combinations of the art of record. Dependent claims 2-13 are patentable over all combinations of the art of record for at least the same reasons as is claim 1.

As amended, each of independent claims 14, 21, 23 and 28 comprises limitations similar to those of claim 1. Thus, independent claims 14, 21, 23 and 28 also are patentable over the art of record for at least the same reasons as is claim 1. Dependent claims 15-20, 22, 24-27 and 29 are patentable over the art of record for at least the same reasons as are their respective independent claims.

V. CONCLUSION

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as

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a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the cited art which have yet to be raised, but which may be raised in the future.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



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